

EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT

THIS EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT (the "Agreement") is dated for identification this _____ day of _____ 2019, by and between the CITY OF MOUNTAIN VIEW (hereinafter "CITY"), a California Charter City and municipal corporation, and _____ (hereinafter "DEVELOPER"), on behalf of itself on the terms and conditions set forth below. CITY and DEVELOPER hereby agree as follows:

I. NEGOTIATIONS

A. Good Faith Negotiations

DEVELOPER and CITY agree to negotiate diligently and in good faith during the negotiation period set forth in Section (I)(B) toward a ground lease and related agreements (such as a development agreement and/or parking agreement) and a comprehensive and detailed term sheet or term sheets for such agreements (collectively, the "DDA and Ground Lease") between CITY and DEVELOPER relating to the development by DEVELOPER of property in the City of Mountain View (the "City"), California which is known and described as Lot 12 (APN _____) containing approximately 66,400 square feet or 1.5 acres for a primarily housing development. Lot 12 is referred to as the "Site" and/or the "Bryant Lot". The Site is generally depicted on Exhibit A, attached hereto, and the proposed development by DEVELOPER is referred to herein as the "Project".

B. Negotiation Period

1. CITY agrees not to negotiate with or solicit offers from any other persons or entities regarding the lease or development of the Site or any portion of the Site for a period of ninety (90) calendar days from _____, 2019 to _____, 2019 (the "ERN Period"). DEVELOPER agrees not to negotiate with any other person or entities for development of a similar project in the vicinity of the Project during the ERN Period, provided, however, that DEVELOPER shall have the right to negotiate and enter agreements for the purchase, lease, or development of other properties in the vicinity of the Project to the extent the same are in addition to, and not in lieu of, the development contemplated for the Site. This prohibition shall not prevent CITY from providing information regarding the Site to persons or entities who may specifically request such information unless required to do so by law but only after providing DEVELOPER with at least two (2) business days' prior notice of such disclosure. This Agreement shall terminate at the expiration of the ERN Period, _____, 2019, unless mutually extended in writing by CITY and DEVELOPER for an additional sixty (60) day period.

2. If by the end of the ERN Period the parties have not entered into a definitive agreement but have reached agreement on a term sheet to be used to thereafter finalize a DDA and Ground Lease and other necessary agreements (which may require an additional __ months), then the exclusivity described above shall continue while such definitive agreements are being negotiated.

C. Consideration

Upon execution of this Agreement, DEVELOPER shall provide CITY with a Fifty Thousand Dollar (\$50,000) good faith and security deposit ("Deposit"). During the ERN Period, CITY may, in its sole discretion, pay third-party costs it incurs during the ERN Period in connection with the negotiation of the DDA and Ground Lease, (i.e., legal counsel, consultants, surveyors, etc.) or, if DEVELOPER shall fail to perform its obligations under Paragraph II(B) below, costs incurred by CITY to perform the same, from this Deposit. An additional deposit of Twenty-five Thousand Dollars (\$25,000) would be required for sixty (60) day extension of the ERN Period.

D. Cost of Studies

The cost of studies conducted by or at the request of DEVELOPER during the ERN Period shall be the responsibility of DEVELOPER. Except as provided in Paragraph I(C), above, CITY shall be responsible for the cost of: (i) studies performed and environmental site assessment prior to the ERN Period or otherwise conducted by or at the request of CITY during the ERN Period; (ii) an A.L.T.A. survey of the Site; and (iii) a current preliminary title report for the Site. DEVELOPER shall not be responsible for any cost incurred by CITY in excess of the Deposit amount set forth in Paragraph I(C), above except as the parties otherwise agree in writing.

E. Tie-Back Agreements

The parties desire Developer to obtain any tie-back agreements with the owners of the neighboring properties for the same. During the ERN Period, City and Developer will cooperate with one another (i) in initiating in communications with neighbors, (ii) in participating in meetings with neighbors for the purpose of obtaining such tie-back agreements, and (iii) the negotiation and documentation of such tie-back agreements.

II. RIGHT OF ACCESS

A. During the ERN Period, DEVELOPER may enter any portion of the Site owned by CITY for the purpose of conducting such tests, inspections, investigations, and studies as DEVELOPER deems desirable or necessary, including, without limitation, conducting surveys and collecting surface and subsurface soils and groundwater samples. DEVELOPER shall be required to obtain all necessary Excavation Permits and shall submit a Traffic Control Plan acceptable to CITY for any work conducted within CITY right-of-way. In addition, DEVELOPER shall obtain Excavation Permits prior to any excavation work. DEVELOPER will minimize the number of parking spaces closed at any one time and shall take all necessary steps to ensure public access and safety is maintained at all times. Prior to any such entry upon the Site, DEVELOPER shall provide CITY with notice of the purpose of such entry a minimum of five (5) business days prior to entry, the location of any sampling to be performed, and the time such sampling will occur.

B. DEVELOPER shall indemnify, defend, and hold CITY and its respective employees, officers, agents, and representatives harmless against any claim for damages to persons or property arising from any activity of DEVELOPER, DEVELOPER's employees, officers, agents, representatives, contractors, subcontractors, or consultants on the Site during the ERN Period; provided, however, that the foregoing shall not apply to liability resulting from the findings and conclusions of any such tests, inspections, investigations, or studies. During the ERN Period, DEVELOPER shall obtain and maintain a policy or policies of comprehensive General and Automobile Liability insurance in a minimum amount of Two Million Dollars (\$2,000,000) per occurrence, including bodily injury, death, contractual liability, including, without limitation, performance by DEVELOPER of the indemnity provisions contained above to the extent it is insurable, and property damage as a combined single limit or equivalent, and such insurance shall name CITY as an additional insured.

C. Promptly after CITY's receipt of the same, DEVELOPER will receive a copy of all reports regarding the condition of the site prepared by CITY's consultants during the ERN Period. Promptly after DEVELOPER's receipt of the same, CITY will receive a copy of all reports regarding the condition of the Site prepared by DEVELOPER's consultants during the ERN Period. All testing wells will be properly closed by DEVELOPER and there shall be proper disposal of any test byproducts by DEVELOPER. Upon expiration of the ERN Period, DEVELOPER shall repair any damage or injury to the Site caused by the activities of DEVELOPER and its agents, employees, contractors, subcontractors, and consultants thereon.

D. CITY shall, as soon as possible after entering into this Agreement but in all events within thirty (30) days following the execution of this Agreement, provide to DEVELOPER an A.L.T.A. survey for the Site and a current preliminary title report

issued by a title company acceptable to DEVELOPER, with a legal description corresponding to the survey, along with copies of all underlying documents.

E. CITY shall maintain in confidence all reports and studies submitted by DEVELOPER to CITY, unless CITY is required to disclose such reports and studies by law (but only after providing DEVELOPER with at least two (2) business days' prior notice of such disclosure).

III. APPROVAL OF GROUND LEASE

DEVELOPER agrees and understands that definitive documents constituting the DDA and Ground Lease resulting from the negotiations under this Agreement shall become effective only after, and only if, the DDA and Ground Lease have been considered and approved by the City Council of the City of Mountain View in a Regular public meeting.

IV. LIMITATIONS

CITY's execution of this Agreement does not constitute CITY's commitment or agreement to undertake (a) disposition of land to DEVELOPER; or (b) any other acts or activities requiring a subsequently independent exercise of discretion by CITY, or any agency or department thereof.

This Agreement does not constitute a disposition of property or exercise of control over property by CITY. Execution of this Agreement by CITY is merely an agreement to enter into a period of exclusive negotiations and to negotiate diligently and in good faith toward a definitive DDA and Ground Lease for the Site according to the terms hereof, reserving final approval by the City Council of the City of Mountain View as to the final DDA and Ground Lease, and all proceedings and decisions in connection therewith.

Execution of this Agreement by DEVELOPER is merely an agreement to negotiate diligently and in good faith toward a definitive DDA and Ground Lease for the Site according to the terms hereof, reserving final approval by the board of directors and/or authorized officers of The Robert Green Company as applicable, as to the final DDA and Ground Lease and such other agreements in connection therewith.

V. NOTICES

Any and all notices required by this Agreement may be directed by fax or mail as follows:

City of Mountain View _____

Attention: _____

500 Castro Street

Mountain View, CA 94041

Fax No. (650) 962-8502

Attention: _____

E-Mail: _____

VI. AUTHORITY

Each party hereto represents and warrants to the other that it has the legal power, right, and authority to enter into this Agreement, and all requisite action has been taken or obtained by said party in connection therewith. Each signatory of a party hereto represents and warrants to the other party that it is duly authorized to enter into this Agreement on behalf of said party and bind said party to the terms and conditions hereof.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate by the parties hereto on the day and year first above written.

"CITY":
CITY OF MOUNTAIN VIEW,
a California charter city and municipal
corporation

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

"DEVELOPER":

By: _____

Print Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Print Name: _____

Title: _____

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